

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 16, 2021 at 2:30 p.m.

1.	20-24912 -C-13	JAVIER CASTELLANOS AND	CONTINUED MOTION TO CONFIRM
	RJ-5	ALEJANDRA ALCANTAR	PLAN
		Richard Jare	5-21-21 [86]

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 53 days' notice was provided. Dkt. 91.

The Motion to Confirm is XXXXXXXXXX

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 89) filed on May 21, 2021.

The trustee filed an Opposition (Dkt. 98) on June 28, 2021, opposing confirmation on the following grounds:

1. The plan provides for Class 2 claimholders to receive increased dividends "no later than month 15" and "no later than month 26," but does not actually specify when the increases should commence.
2. The debtors' Form B22C has not been prepared correctly because the debtors have included business expenses.
3. The trustee has requested, and the debtors have yet to provide, a copy of their liability and worker's compensation riders, if appropriate, for Home Run Cleaning LLC.
4. The trustee has requested, and the debtors have yet to provide, evidence supporting the debtors' valuation of their corporation, AAA Cleaning Service, and a list of corporate assets and obligations.
5. The debtors may owe debts to the IRS and FTB as a result of unfiled taxes for their corporation, AAA Cleaning Service. The California Secretary of State website reports that the corporation has been suspended by the FTB.

6. The debtors report they have created a new entity Home Run Cleaning Service, LLC and the Trustee presumes the debtors are the sole members of the LLC. However, the Trustee has been unable to locate the LLC on the website of the California Secretary of State. The trustee requests the debtors provide the following:
 - a. Documents evidencing the formation of the LLC;
 - b. Evidence that the LLC is properly registered in California;
 - c. The Tax ID number for the LLC; and
 - d. Evidence regarding the assets used to fund the LLC at its inception.

DEBTOR'S REPLY

The debtors filed a Reply on July 9, 2021, requesting a continuance of a few weeks due to the unavailability of debtors' counsel. Dkt. 103.

AMENDED REPLY

The debtors filed an Amended Reply on August 6, 2021. Dkt. 109. The debtors reply:

1. The order confirming plan can address the date increased dividends commence.
2. The debtors intends to refile Form B22C to exclude business expenses.
3. The debtors are preparing a declaration attesting that the debtors do not have worker's compensation riders for Home Run Cleaning LLC because the employees are independent contractors.
4. The debtors have not been paying or filing tax returns for AAA Cleaning Service. Filing tax returns presently would be beyond the debtors' means, which is why the debtors created a new LLC. There is a risk that the corporation might owe income taxes if it prepared 6 years of income tax returns that it cannot afford to prepare.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtors, Javier Suarez Castellanos and Alejandra Alcantar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxx~~

Final Ruling: No appearance at the August 16, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 57.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify is granted.

The debtor filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify filed by the debtor, Damion Alexander Hribik, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Modified Chapter 13 Plan (Dkt.51) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Debtor's counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 25 days' notice was provided. Dkt. 52.

The Motion to Refinance is granted.

The debtor filed this Motion seeking authority to refinance the loans secured by the debtor's residence in order to pay off all claims in the Chapter 13 plan.

The debtor values his residence at \$820,000.00, with secured claims of only \$497,093.90. The debtor is seeking a loan of approximately \$586,000.00, which will pay off the existing mortgage and line of credit and provide at least \$42,500.00 to pay off the chapter 13 plan.

TRUSTEE'S RESPONSE

The trustee filed a Response indicating non-opposition so long as the following is added to the order granting the Motion:

a. The refinance is approved provided all liens, if any, are paid in full in a manner consistent with the plan, notwithstanding relief of stay that has been entered.

b. The Trustee shall approve the Title Company and Escrow Company to be used in connection with the refinance. His approval shall not be unreasonably withheld.

c. The Trustee shall approve the estimated closing statement to be prepared in connection with the refinance, and when approved, disbursement may only be made in accordance with the approved estimated closing statement.

d. The refinance will pay the case in full paying no less than a 100% dividend to Debtor's general unsecured creditors.

DISCUSSION

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Earl Lester Hays having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 52.

The Motion to Confirm is XXXXXX

The debtor filed this Motion seeking to confirm the First Amended Chapter 13 Plan (Dkt. 51) filed on June 29, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 61) on July 19, 2021, opposing confirmation on the following grounds:

1. The plan treats the claim of Rocky Top Rentals, LLC, as a Class 2. However, that creditor's POC, no. 7, indicates the claim is unsecured.
2. The debtors' plan is a sixty-month plan and the average monthly dividend proposed for the Class 2 claim of Ford Motor Credit Company will take 60 months to pay said claim. As disbursements are not set to commence until month 4, debtor's plan is not feasible.

DEBTOR'S REPLY

The debtor filed a Reply agreeing with the trustee's arguments. The debtor represents that Rocky Top Rentals, LLC, is being contacted to see if the creditor will amended its claim. If that creditor does not do so, the debtor acknowledges that the dividend to unsecured will be increased.

The debtor further recommends the order confirming plan address the start date to payments on Ford Motor Credit Company's claim.

DISCUSSION

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Ron Lee

Colla, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~xxxxxxxxxx~~

Thru #6

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 21 days' notice. Fed. R. Bankr. P. 2002(a)(2).

The Proof of Service shows that only 17 days' notice was provided. Dkt. 124.

Because insufficient notice was provided, the Motion shall be denied without prejudice.

The Motion to Sell is denied without prejudice.

The debtors filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell the debtor's business known as Papa Murphy's Take N Bake Pizza CA058 ("Property").

The Motion represents that an offer of \$160,000.00 was received for the Property.

Exhibit 1 attached to the debtors' declaration is a seller's closing statement. The statement discloses the proposed buyer is L&P HALEY ENTERPRISES LLC. Dkt. 123.

Exhibit 2 attached to the debtors' declaration is an email communication from creditor Ready Capital consenting to the sale of the property and the release of its secured claim upon receipt of the \$160,000.00 net sale proceeds.

DISCUSSION

As discussed above, insufficient notice was provided. Federal Rule of Bankruptcy Procedure 2002(a) states:

(a) Twenty-One-Day Notices to Parties in Interest. Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

...

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

The proof of service reflects notice was effect July 30, 2021, 17 days prior to the August 16, 2021 hearing date. Dkt. 124.

Therefore, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Michael Scott Saso and Jeannine Saso ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that motion is denied without prejudice.

6. [20-20640](#)-C-13 MICHAEL/JEANNINE SASO
[RDG](#)-3 Sarah Little

OBJECTION TO CLAIM OF READYCAP
LENDING LLC, CLAIM NUMBER 6
7-8-21 [[113](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 25 days' notice was provided. Dkt. 118.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 6, filed by ReadyCap Lending LLC was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is April 15, 2020. Notice of Bankruptcy Filing and Deadlines, Dkt. 17. The Proof of Claim subject to this Objection was filed June 3, 2020.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6 of ReadyCap Lending LLC is sustained, and the claim is disallowed in its entirety.

7. [21-21864](#)-C-13 GUNVANT PATEL
[EMM](#)-1 Gabriel Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
7-15-21 [[19](#)]

Thru #8

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 32 days' notice was provided. Dkt. 29.

The Objection to Confirmation of Plan is sustained.

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as trustee of CSMC 2019-SPL1 Trust ("Creditor") opposes confirmation of the Chapter 13 plan because plan does not provide for Creditor's prepetition arrearages, which total \$2,079.61.

While the plan provides that the proof of claim controls the amount of the claim paid (meaning the arrearages are provided for), the debtor has not yet met the debtor's burden to show the plan is adequately funded for the increased payment. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as trustee of CSMC 2019-SPL1 Trust, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and the plan is not confirmed.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 Meeting has not been concluded yet.
2. Section 2.02 of the Plan provides that the debtor will tender payments derived from sale proceeds from the debtor's primary residence, but does not provide a date certain nor sum certain to be paid into the plan.
3. Schedule I includes debtor's income from LLC draws at \$6,457.50 a month. The trustee is unable to determine debtor's income from LLC draws from the bank statements provided.
4. The trustee requests that the court not approve debtor's attorney's fees until such time as an appropriate application for the fees is filed, served and heard.
5. Debtor's schedules list non-exempt assets totaling \$4,221,135.95, and unsecured priority claims totaling \$0. Debtor's plan must pay 100% to Debtor's general unsecured creditors, plus interest at the Federal Judgment Rate of 0.05% since the value of the non-exempt assets exceeds the amount of the general unsecured claims.

DISCUSSION

A review of the docket shows the debtor attended the continued 341 Meeting, and the Meeting was concluded.

However, the debtor has not shown the plan to be feasible since the debtor's income has not been confirmed with the trustee, and because specifics about the debtor's proposed sale of real property are lacking. The plan also did not account for prepetition arrearages owed to Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as trustee of CSMC 2019-SPL1 Trust (Objection, Dkt. 19).

Additionally, the plan does not meet the liquidation test without providing the Federal Judgment Rate of 0.05 percent since the value of the non-exempt assets exceeds the amount of the general unsecured claims.

Each of the above is reason to deny confirmation. 11 U.S.C. § 1325(a)(4) & (a)(6). Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and the plan is not confirmed.

9. [19-27468](#)-C-13 EDDIE/CARYN GARDNER
[AP-1](#) Peter Macaluso

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
5-18-21 [[122](#)]

HSBC BANK USA, NATIONAL
ASSOCIATION VS.

Thru #10

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 128.

The Motion for Relief from the Automatic Stay is xxxxxx.
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HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 9475 Mandrake Court, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent 3 postpetition payments. Declaration, Dkt. 125. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$493,726.72, exceeds the value of the Property, which is \$471,844.00. Id.

TRUSTEE'S RESPONSE

The trustee filed a Response on June 7, 2021. Dkt. 131. The Response reports that the debtors are \$11,941.00 delinquent in plan payments, and that \$43,128.37 has been distributed to Movant as a Class 1 claim holder under the confirmed plan.

DEBTOR'S OPPOSITION

The debtors filed an Opposition on June 7, 2021. Dkt. 133. The debtors argue that the value of their home is now \$689,000.00, leaving a significant equity cushion. The debtors also report that they incurred additional expenses due to COVID-19, and that a modified plan is being proposed to bring payments current.

The debtors request the Motion be denied, or continued to the confirmation hearing for the Modified Plan.

DISCUSSION

The parties agreed to a continuance at the prior hearing to allow the debtors to prosecute a modified plan.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by HSBC Bank SA, National Association as Trustee for Ellington Loan Acquisition Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **xxxxxxxxxx**

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 141.

The Motion to Modify is XXXXXX
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The debtors filed this Motion seeking to confirm the First Modified Chapter 13 Plan (Dkt. 140) filed on June 7, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 144) on June 14, 2021, opposing confirmation because the modified plan does not provide all disposable income into the plan. The current plan provided for a plan payment increase after a retirement loan is paid off; the modified plan does not propose an increase upon repayment in full of the retirement loan.

DEBTORS' REPLY

The debtors filed a Reply on July 6, 2021. Dkt. 149. The debtors' counsel argues the debtors are proceeding in good faith, that the amended schedules no longer include a retirement loan, and that "the retirement loans were finished being paid as the costs associated with the pandemic increased their expenses so that there was no disposable income to contribute to the Trustee."

DISCUSSION

At the prior hearing the parties agreed to a continuance to allow the debtors to file accurate amended schedules. A review of the docket shows Amended Schedule I and J were filed August 3, 2021. Dkt. 157.

At the hearing, xxxxxxxxxxxxxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtors, Eddie Gardner and Caryn Gardner, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxxxx

11. [21-21875](#)-C-13 KIMBERLY BRADLEY
[GAL](#)-1 Steele Lanphier

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION TO HAVE IN REM RELIEF
FROM STAY
5-27-21 [[9](#)]

FARMERS NATIONAL BANK VS.

Thru #13

Final Ruling: No appearance at the August 16, 2021 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 14.

The Motion for Relief from the Automatic Stay is denied without prejudice.

Farmers National Bank ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2016 Ford Explorer (the "Property")

On August 11, 2021, the Movant and the debtor filed a Stipulation agreeing to extension of the stay so long as certain conditions are met. Dkt. 63.

Therefore, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Farmers National Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

12. [21-21875](#)-C-13 KIMBERLY BRADLEY
[MMJ](#)-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY BANK
7-14-21 [[47](#)]

The Objection to Confirmation of Plan shall be treated as an opposition and will be heard alongside the debtor's Motion to Confirm plan (Dkt. 29).

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 56 days' notice was provided. Dkt. 35.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 33) filed on June 21, 2021.

TRUSTEE'S OPPOSITION

The trustee filed an Opposition (Dkt. 43) on July 12, 2021, opposing confirmation on the following grounds:

1. The 341 Meeting has not concluded.
2. The debtor has not provided the trustee with a copy of the debtor's most recent Federal and State income tax returns.
3. The debtor's Schedule I lists income from Social Security, Pension and Retirement accounts. But, the debtor has not provided the trustee with copies of Debtor's Social Security, Pension and Retirement statements as required by 11 U.S.C. §521(a)(1)(B)(iv) and LBR 1007-1.

CREDITOR'S OPPOSITION

Creditor Ally Bank ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide for Creditor's full secured claim.
2. The plan fails to pay the applicable prime plus interest rate of 3.25 percent.
3. The plan does not provide for equal monthly payments to Creditor.

DISCUSSION

As to the Creditor's Objection, the debtor's Statement of Financial Affairs reports the collateral securing Creditor's claim was repossessed.

Dkt. 26. Although not specified in the plan, it appears likely the debtor intends to treat that claim as Class 3, satisfied with the surrender of the collateral. If this is the case the order confirming the plan can specify such treatment.

Moving to the trustee's grounds for opposition, a review of the docket shows the 341 Meeting has now been concluded.

However, there is no evidence showing the debtor has provided her recent tax returns, or evidence of payment received within 60 days before the date of the filing of the petition, both of which are required by 11 U.S.C. § 521.

That is reason to deny confirmation. 11 U.S.C. § 1325(a)(1). The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm filed by the debtor, Kimberly Elaine Bradley, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 40.

The Motion to Dismiss is granted, and the case is dismissed.

The debtor filed this Motion seeking voluntary dismissal of the case pursuant to 11 U.S.C. § 1307(b) because the case was filed to stay eviction proceedings that have now been concluded.

A review of the docket shows the case has not been previously converted. Therefore, the Motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the debtor, Mustapha Cham,
having been presented to the court, and upon
review of the pleadings, evidence, arguments
of counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted, and the case is dismissed.

15. [17-24198](#)-C-13 NAITA SAEFONG
[FF-3](#) Gary Fraley

OBJECTION TO CLAIM OF AVANT,
CLAIM NUMBER 5
6-25-21 [[72](#)]

Thru #16

No Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (1) procedure which requires 44 days' notice. The Proof of Service shows that 52 days' notice was provided. Dkt. 76.

The Objection to Proof of Claim is XXXXXX

The debtor filed this Objection arguing that Proof of Claim, No. 5, filed by Avant should be disallowed because that claim was paid through debt consolidation with National Debt Relief prior to the debtor filing this case.

The sole evidence provided by the debtor to show that the Avant's claim was paid prepetition is the debtor's statement in the debtor's declaration: "This debtor was paid in full through debt consolidation with National Debt Relief prior to the filing of the bankruptcy." Declaration, Dkt. 75.

The other evidence filed in support of the Objection are a copy of the creditor's Proof of Claim, and a copy of the debtor's Schedule E/F listing creditor's claim at \$0. Dkt. 74.

Included in the Proof of Claim as an attachment is a transaction history. The last payment was made June 2017, and no payoff through debt consolidation or otherwise is reflected.

DISCUSSION

If the claim was in fact paid through debt consolidation, it is unclear why the debtor has not filed any documentation of that transaction.

At the hearing, XXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim filed in this case by the debtor, Naita Saefong, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 5 of Avant is XXXXXXXXXX

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 83.

The Motion to Modify is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 81) filed on June 29, 2021.

The trustee filed an Opposition (Dkt. 84) on July 19, 2021, opposing confirmation on the following grounds:

1. The debtor is \$4,898.40 delinquent under the proposed plan.
2. The plan relies on the court sustaining the debtor's Objection to Proof of Claim No. 5 filed by creditor Avant.

DISCUSSION

The trustee's grounds for opposition are well-taken. The plan's feasibility relies on the court sustaining the debtor's Objection.

Notwithstanding the outcome of the debtor's Objection, the debtor's delinquency in plan payments is evidence that the plan is not feasible. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Modify Plan filed by the debtor, Naita Saefong, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.